REMARKS/ARGUMENTS

The Applicants originally submitted Claims 1-20 and 22-60 in the application. In response to a restriction request, the Applicants previously canceled Claims 23-29 without prejudice or disclaimer. In the present response, the Applicants have not amended, canceled, or added any claims. Accordingly, Claims 1-20, 22, and 30-60 are currently pending in the application.

I. Rejection of Claims 1-20, 22, and 30-60 under Non-Statutory Double Patenting

The Examiner has rejected Claims 1-20, 22, and 30-60 on the grounds of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-21 of copending Application No. 10/505,197. The Examiner has indicated that while the conflicting claims are not identical to the claims of the copending application, they are not patentably distinct from each other. The Applicants disagree with the Examiner's nonstatutory obviousness-type double patenting rejection of the pending case, as argued below.

The Federal Circuit and its predecessor, the United States Court of Customs and Patent Appeals, recognized the need to fashion a doctrine of nonstatutory double patenting (also known as "obviousness-type" double patenting) to prevent the issuance of a patent on claims that are nearly identical to or simply an obvious extension of claims in an earlier patent. *Geneva, et al. v. Glaxosmithkline PLC, et al.*, 349 F.3d 1373, 1377-78 (Fed. Cir. 2003). This doctrine was derived, based upon public policy, to prevent an Applicant from extending patent protection for an invention *beyond the statutory term* of an earlier- issued patent by claiming only a slight variant of the earlier patent. *Id.*

Per MPEP §2701, a patent granted on an international application filed on or after June 8, 1995 and which enters the national stage under 35 U.S.C. 371 will have a term which ends twenty years from the filing date of the international application. Both the instant case and the cited '197 Application are international applications with a filing date of February 24, 2003 (after June 8, 1995) and entered the national stage under 35 U.S.C. 371 and thus both have the same statutory term date of February 24, 2023. As both the instant case and the '197 Application have the exact same statutory term date, a nonstatutory obviousness-type double patenting rejection is improper in the instant case - the policy reasons for issuing a nonstatutory obviousness-type double patenting rejection are missing. Accordingly, the Applicants request the Examiner to withdraw the nonstatutory obviousness-type double patenting rejection of Claims 1-20, 22, and 30-60 and allow issuance thereof.

II. Comment of References

The Applicants reserve further review of the reference cited but not relied upon if relied upon in the future.

III. Conclusion

In view of the foregoing remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-20, 22, and 30-60.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

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